

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BILLY JOVAN SAIZ,

Case No. 2:23-cv-01228-ART-BNW

Petitioner,

ORDER

v.

BRIAN E. WILLIAMS, SR.,

Respondents.

Pro se Petitioner Billy Jovan Saiz has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (ECF No. 1-1 (“Petition”).) This matter comes before the court for initial review under the Rules Governing Section 2254 Cases (“Habeas Rules”). For the reasons discussed below, the court finds that a response is warranted and *sua sponte* raises the issue of counsel.

I. BACKGROUND¹

Saiz challenges a conviction and sentence imposed by the Eighth Judicial District Court for Clark County (“state court”). *State of Nevada v. Billy Saiz*, Case No. C-18-336703-1. The state court entered a judgment of conviction on January 16, 2020, pursuant to a guilty plea, for battery with the use of a deadly weapon and ownership or possession of a firearm by a prohibited person. Saiz was sentenced to two concurrent terms of 84 to 240 months. It does not appear that Saiz filed a direct appeal. Instead, Saiz filed a “postconviction motion to withdraw guilty plea pursuant to NRS 176.165” on June 12, 2020. The state court denied Saiz’s motion, Saiz appealed, and the Nevada Court of Appeals reversed and remanded on July 13, 2021, instructing the state court to “properly serve Saiz with an order giving Saiz a reasonable time in which to fix the procedural defects in his petition.” *Billy Jovan Saiz, Jr., v. State of Nevada*, Case No. 81812-COA. In

¹ The court takes judicial notice of the online docket records of the Eighth Judicial District Court and Nevada appellate courts. These docket records may be accessed at <https://www.clarkcountycourts.us/Anonymous/default.aspx> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 compliance with the remand, Saiz filed a state petition for writ of habeas corpus
2 on September 20, 2021. *Billy Saiz v. People of the State of Nevada*, A-20-818017-
3 W. On February 10, 2022, the state court denied the petition. Saiz appealed, and
4 the Nevada Court of Appeals affirmed on February 23, 2023. *Billy Jovan Saiz, Jr.,*
5 *v. The State of Nevada*, No. 84318-COA.

6 Saiz initiated this action on or about August 4, 2023. (ECF No 1.) Saiz
7 moved to proceed *in forma pauperis* (“IFP”). (ECF Nos. 8, 12.) This court finds
8 good cause exists to grant Saiz’s IFP application.

9 **II. DISCUSSION**

10 Habeas Rule 4 requires this court to examine the Petition and order a
11 response unless it “plainly appears” that the Petition is not entitled to relief. *See*
12 *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts
13 to screen and dismiss petitions that are patently frivolous, vague, conclusory,
14 palpably incredible, false, or plagued by procedural defects. *Boyd v. Thompson*,
15 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d 490, 491
16 (9th Cir. 1990) (collecting cases). A response is warranted in the instant case.

17 Further, it appears that counsel may be helpful in this case. The Criminal
18 Justice Act authorizes the court to appoint counsel “when the interests of justice
19 so require.” 18 U.S.C. § 3006A(a)(2). Although this court finds that the
20 appointment of counsel is in the interests of justice, this court is cognizant of the
21 fact that Saiz has not moved for the appointment of counsel. As such, this court
22 gives Saiz 30 days to file a motion for the appointment of counsel. If Saiz does not
23 file a motion for the appointment of counsel within 30 days, the court will not
24 appoint counsel and will issue a scheduling order on the Petition.

25 **III. CONCLUSION**

26 It is therefore ordered that the application to proceed *in forma pauperis*
27 (ECF No. 8) is granted.

28 It is further ordered that the clerk file the Petition (ECF No. 1-1.)

1 It is further ordered that Saiz file a motion for the appointment of counsel
2 within 30 days if he desires that counsel be appointed to represent him. If Saiz
3 does not file a motion for the appointment of counsel within 30 days, the court
4 will not appoint counsel for Saiz and will issue a scheduling order on the Petition.

5 Dated this 20th day of December 2023.

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9 ANNE R. TRAUM
10 UNITED STATES DISTRICT JUDGE
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